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IN THE IOWA DISTRICT COURT FOR CLAY COUNTY

CLERK DISTRICT COURT
CLAY COUNTY, IOWA

CLAY COUNTY, IOWA,

No. CVCV026519

Petitioner,

v.

PUBLIC EMPLOYMENT
RELATIONS BOARD and
INTERNATIONAL UNION
OF OPERATING ENGINEERS,
LOCAL 234,

RULING ON PETITIONER'S
PETITION FOR JUDICIAL
REVIEW

Respondents.

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PUBLIC EMPLOYMENT
RELATIONS BOARD

This case comes before the Court concerning a Petition for Judicial Review of Agency Action filed by Petitioner Clay County, Iowa, (hereinafter "the County") on May 10, 2007. On May 22, 2007, Respondent International Union of Operating Engineers, Local 234, (hereinafter "the Union") filed its answer denying the material allegations of the County's petition. Respondent Public Employment Relations Board (hereinafter "the Board") then filed its answer to the County's petition on May 29, 2007, also denying the material allegations set forth therein.

In compliance with a scheduling order filed on June 25, 2007, briefs were filed on behalf of each party through their attorneys of record with Assistant Clay County Attorney Michael L. Zenor representing the County, Attorney Jan V. Berry representing the Board, and Attorney MacDonald Smith representing the Union. The case was then submitted for final ruling following the filing of an order denying the County's Application to Submit Additional Evidence on April 24, 2008.

After now having now reviewed the documents contained in the court file, after having reviewed the administrative record, and after having considered the applicable law, the court enters the following ruling.

FINDINGS OF FACT

The Union originally filed a complaint with the Board alleging the County committed prohibited practices in violation of Iowa Code Sections 20.10(a), (c), and (d), when it terminated the employment of James Sikora (hereinafter "Sikora") in response to his exercising of rights granted him by the Public Employee Relation Act codified in Iowa Code Chapter 20. Following an evidentiary hearing, Administrative Law Judge James McClimon issued a Proposed Decision concluding the County had committed prohibited practices, and ordering the County to reinstate Sikora with full back pay and benefits, less interim earnings. The County appealed ALJ McClimon's Proposed Decision to the Board. In its April 13, 2007 Decision on Appeal, the Board made the following Findings of Fact:

The Union is the certified bargaining representative of a bargaining unit consisting of certain Clay County Secondary Roads Department employees, which formerly included James Sikora. Sikora worked full time as an equipment operator for the road department from 1984 until his discharge from employment on October 29, 2004. Prior to his discharge, Sikora was never disciplined for any reason during his 20 years of employment with the County. At the time of his discharge, foreman John Rosacker [hereinafter Rosacker] was Sikora's immediate supervisor and the county engineer was Scott Rinehart [hereinafter Rinehart].

In addition to his primary employment with the County, commencing in 1993 Sikora worked part-time for the Clay County Fair Association (Fair Board), a private, non-profit corporation, maintaining gravel streets and the race track area at the fairgrounds, using road graders, pay loaders and trucks either loaned or rented to the Fair Board by the County. Sikora worked for the Fair Board from roughly April to

October during hours after his workday with the County, on his days off or on vacation days from his County employment, and would take a week of vacation to work for the Fair Board during the fair itself. Several other road department employees, including Rob Kluender, and two employees with other primary employment also worked part-time for the Fair Board. In 2003 Sikora and Kluender were making between \$6.00 and \$7.50 per hour for this part-time employment.

Prior to the fall of 2003, Ike Albrecht, apparently also a County employee who did part-time work for the Fair Board, acted as a County spokesperson for purposes of dealing with fair manager Phil Hurst when Hurst needed to discuss matters concerning the use of County equipment for work at the fairgrounds. Albrecht resigned from his Fair Board employment sometime in 2003.

In the fall of 2003, Sikora began keeping track of the hours of all of the part-time employees on the Fair Board crew for submission to fair manager Hurst. When the fair was over in the fall of 2003, Sikora and Kluender went to Hurst's office to request a raise for the crew. They told Hurst they believed the crew was doing a good job at the fairgrounds and should be compensated more. Hurst said he would think about it and get back to them. Having heard nothing from Hurst on the subject by the following spring, Sikora went alone to Hurst's office in April, 2004 and again in May or June, 2004, to ask about the status of the raise issue. Hurst said that the budget was tight, that he hadn't made a decision yet, and that he would think about it and get back to Sikora.

On July 1, 2004, county engineer Scott Rinehart began his employment with the County. Less than three weeks later, Sikora and two other road department employees met with representatives of the County's board of supervisors and lodged complaints about the actions of Rosacker (their immediate supervisor) and other employment related matters. The board representatives indicated they would look into the matters, discuss them with Rinehart, and meet again with the employees in September, 2004. No such follow-up meeting took place.

On or about July 15, 2004, the Union filed with PERB a petition for a representation election and the Union's certification as collective bargaining representative for a bargaining unit of the County's road department employees. PERB notified the County of the filing of the petition and the County, through Rinehart, acknowledged the filing of the petition.

Prior to this time, when more gravel was needed on the streets at the fairgrounds, Sikora would ask to use the County's gravel trucks and would haul the gravel himself on Fridays, as part of his part-time work for the Fair Board. In July, 2004, Sikora was told by his County supervisors that when more gravel was needed at the fairgrounds Hurst should contact Rinehart's office to arrange for the County to haul the gravel during the County's workday. Sikora relayed this information to Hurst.

At the end of July, 2004 (possibly at the meeting where use of gravel trucks was discussed) Sikora met with Hurst at Hurst's office to turn in time records for himself and Kluender for hours they had worked at the fairgrounds. Sikora asked Hurst if he had decided about raises and Hurst said he had not. Sikora told Hurst he felt he and the crew were deserving of a raise, and that he, personally, didn't feel he could continue working for the Fair Board at his low rate of pay. He told Hurst he made approximately \$16.00 per hour working for the County. Hurst told him he couldn't pay that much, but asked if \$12.50 for Sikora and \$10.50 for Kluender would be enough to keep them working there. Sikora said that would be fine. They also agreed upon \$1.00 per hour raise for the other crew members. Thereafter, the increased wages were put into effect and Sikora and his crew continued to work at the increased rates for the rest of the summer and into the fall, including during the fair.

On or about August 2, 2004, PERB directed a representation election among the road department employees of the County. The election was conducted by mail between August 26 and September 9, 2004. As a result of the election, PERB certified the Union as the collective bargaining representative for the employees in the road department bargaining unit.

In late July or early August 2004, Hurst contacted the county engineer's office to discuss the use of gravel trucks, as Sikora had relayed to him that he should. Rosacker came to see Hurst and told him, as Sikora had previously, that he should not go through Sikora to request gravel trucks, but should contact the county engineer's office directly with such requests. During this conversation, Hurst told Rosacker that he "had been led to believe" that Rinehart was conditioning Hurst's continued use of County equipment on Hurst's payment of wages to Sikora and other Fair Board crew members that were comparable to wages being paid by the County. Rosacker apparently relayed this discussion to Rinehart, who came to the fairgrounds later that same day and told Hurst that Hurst's belief "absolutely was not true." Rinehart told Hurst that "there is probably some disciplinary action that needed to be taken there" and asked him to

"write that down in a written memo to me." Hurst said he would do that but he was too busy to do so until after the fair.

After the 2004 fair, Sikora reported to Hurst the hours he and the crew had worked for the fair. In late September or early October, 2004, Sikora went to Hurst's office to see if paychecks were ready. Hurst was upset and said he felt Sikora he misled him, that he was upset about the wages he had agreed to, and that he felt Ike Albright had been squeezed out of his position. Sikora had no further conversations with Hurst prior to his discharge.

Also in late September or early October, 2004, Rinehart called Hurst and said that he would like to "look into" what Hurst said had happened, and that Hurst needed to get something written down "so we can have something happen here." According to Hurst's testimony, Rinehart asked him if he would go to the county attorney's office to make a written statement. Rinehart testified that Hurst had said that he would get something written down but "wanted to do it . . . with the county attorney." In any event, it was Rinehart who called the county attorney's office about the matter, and assistant county attorney Michael Houchins [hereinafter Houchins] called Hurst requesting that he come to Houchins' office on October 20, 2004.

Following the meeting between Houchins and Hurst, Houchins sent Rinehart the following letter, dated October 27, 2004:

Re: Interview With Phil Hurst on 10-20-2004,
Concerning Jim Sikora

Dear Scott:

On Wednesday, October 20, 2004, Phil Hurst came to my office to discuss Jim Sikora's work at the 2004 Clay County Fair. Phil stated that he had previously had Ike Albrecht do the infield work at the Clay County Fair. Ike was paid \$8.25 an hour. Sometime last year, Ike came in to visit with Phil and stated that he felt pressure to step down. Ike stated the young guys were putting on pressure for him to step down because he was old enough, that he had enough money, and did not need the money. He told Phil that he was told by young guys that he should move on.

A couple of weeks later, Ike came back to visit with Phil and stated that he would not be able to stay on. He stated that the "younger guys want to take over." Phil then indicated

that Ike did come back later and stated he did want to work at the fair doing other duties.

Soon after Ike stated that he would not be coming back, Sikora came to visit with Phil Hurst. At that time, Phil did not know you and had not visited with you about using the County equipment at the fair. Sikora then stated to Phil Hurst that because of the expense of the equipment, approximately \$100,000 worth of equipment, that the new County Engineer stated that Sikora could not be operating the equipment unless working at the same salary that he was receiving while working for the County. Sikora emphasized to Phil that they needed more money to work. He indicated that the only way they could work and use the County equipment was if they were paid more. It was then agreed that Jim Sikora would receive \$12.50 an hour, and Rob Kluender would also receive a raise. Phil was led to believe that he had to pay the \$12.50 per hour to Sikora, or the Clay County Fair would not be able to use County equipment.

Phil indicated that some time before the fair, you had a conversation with him. You told him that he should contact Brad or John [Rosacker] with regard to implementing things involving the Clay County equipment. Phil said that Sikora had led him to believe that Sikora was the one he should go through in order to discuss the use of County equipment.

Phil also indicated that he was disappointed in the amount of hours that Sikora and Kluender turned in. He indicated they each turned in 199 hours for working at the Clay County Fair. He indicated that one of those days he was charged for 19 hours for time when it was raining most of the day. Phil discovered that Sikora had charged for time that he was sitting in the shed waiting for the rain to stop. Phil indicated that he has discussed his concerns about this with Sikora. Likely, Sikora will not be allowed to work at the fair next year.

If you have any other questions or concerns about this conversation, please feel free to call.

On October 29, 2004, Sikora was working at the county maintenance shop when Rinehart called him into his office and, in the presence of Rosacker, handed Sikora the October 27 letter Houchins had written and asked him to read

it. Sikora did so, and Rinehart asked him what he thought of it. Sikora replied that it was mostly untrue. Rinehart then handed Sikora his paycheck, told him he was paid up and that he was done working for Clay County Secondary Roads Department. Sikora was shocked, and said that he couldn't believe he was being fired after 20 years of service over something Rinehart had not even asked him about or discussed with him. He asked Rinehart to tell him what the problem was, and Rinehart pointed to the paragraph in the letter dealing with Sikora's alleged statements to Hurst about the county engineer having stated that Sikora could not be operating the equipment unless working at the same salary he was receiving while working for the County. Sikora told Rinehart it was not true at all and asked if there was anything he could do to clear this up, but Rinehart had no comment.

About a week after Sikora's termination Rinehart prepared the following notes about the termination meeting:

Memo concerning the dismissal of Jim Sikora

At approximately 2:30 pm Friday, October 29, 2004 I Scott Rinehart met with John Rosacker and Jim Sikora at the east end of the shop building (break area). The purpose of the meeting was to inform Jim Sikora he was dismissed from employment with the Clay County Secondary Road Department.

I gave Jim Sikora a copy of Phil Hurst's statement given to Mike Houchins on October 20, 2004.

Jim read the statement and had little reaction. I then handed Jim his paycheck and said he was done working for the Clay County Secondary Roads Department.

Jim's first reaction was to say "Come on Scott I've been here 20 years, I need this job. I live paycheck to paycheck like most people. Isn't there something I can do?" He asked me if this statement was the only reason for his dismissal. He thought he had given 20 good years.

I did not comment.

He did not deny the statement of Phil Hurst's other than to say he wasn't mad at him and that he wouldn't say anything to Phil that would get me into trouble. Jim stated that he wanted a raise for the level of responsibilities he had at the

Clay County Fair and that in the end; he let Phil decide what would be fair.

The conversation continued for perhaps 45 minutes. Most of the conversation was one sided with Jim reiterating his 20 years of service. I told him I wasn't going to say anything about his service with the County.

The instant prohibited practice complaint was filed on November 29, 2004. Only Sikora, Hurst and Rinehart testified at the April 8, 2005 evidentiary hearing on the complaint. Hurst testified that Houchins' letter was incorrect in stating Sikora had referred to working at the "same" salary paid by the County, and that Sikora had instead referred to the need to be working at a "comparable" salary. When asked if the letter otherwise correctly characterized Sikora's statements to him, Hurst testified:

As I remember it at that time, what he stated was that he had talked with the county, the new county engineer about the equipment. He had also talked to an engineer by the name of Mr. Thiese and I never did quite get the relationship with that. . . . And when, in that conversation he said that the county engineer was unhappy because he was working at lower salary—much lower salary for the Fair than he was working for the engineer for and he felt that they should be, if he was going to work with that, with their expensive equipment, he should be getting a comparable salary at the Fair with what he was getting at the county.

Hurst also testified that Sikora's alleged statements in this regard (i.e., about County equipment and comparable salaries) had been made not at his meeting with Sikora in July, 2004, at which crew wages were agreed upon, but much earlier, at the first meeting he had with Sikora and Kluender to discuss wages after the fair in 2003. Hurst also testified that this 2003 meeting occurred "after the new county engineer had been put in place."

Sikora testified that the only parts of Houchins' letter that were true were the parts indicating he had discussions with Hurst requesting raises for the crew. Sikora testified that he did not tell Hurst the county engineer would not let him operate the equipment unless he was paid the County wage and that never led Hurst to believe that he was the contact or one having control over the use of County equipment.

The Board went on to find Hurst's statements inconsistent and confused. It also determined Rinehart's claim Sikora did not deny allegations made against him at the termination meeting was suspect. Ultimately, the Board found Sikora's testimony consistent, persuasive, and correct.

Concerning the Board's conclusions of law, it found the County violated Iowa Code section 20.10(2)(a) by terminating Sikora for engaging in protected concerted activities (i.e., bargaining for wage increases with a private part-time employer). The Board then ordered Sikora reinstated to his former position with the County, including back pay, as well as other remedial measures.

After receiving the Board's decision, the County filed the present action seeking an order from this court reversing the decision of the Board. Additional facts will be discussed where relevant to the issues under review.

STANDARD OF REVIEW

Under Iowa Code section 17A.19(1) (2007), a person aggrieved or adversely affected by a final agency action is entitled to judicial review. Iowa Code Section 17A.19(10) (2007) provides that the district court exercises its power of judicial review when it acts in an appellate capacity to review an agency action and correct errors of law. *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 265 (Iowa 2001) (citing *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000)). The district court does not exercise de novo review. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). The scope of judicial review is limited to the determination of whether the agency committed any

errors of law specified in Iowa Code section 17A.19(10)(a)–(n) (2007). *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001).

The court must consider all of the evidence in the record, including evidence that supports and opposes the agency decision. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). An agency's factual findings must be supported by substantial evidence when the record is viewed as a whole. Iowa Code § 17A.19(10)(f) (2007); *Al-Gharib*, 604 N.W.2d at 632. The substantiality of the evidence does not need to amount to preponderance, but a mere scintilla will not suffice. *Elliot v. Iowa Dept. of Transp.*, 377 N.W.2d 250, 256 (Iowa Ct. App. 1985). When the agency's factual findings are supported by substantial evidence, they are binding on reviewing courts. *Al-Gharib*, 604 N.W.2d at 632.

An agency's findings of fact carry the effect of a jury verdict. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). Therefore, reviewing courts must give deference to the agency's fact-finding role, and broadly and liberally construe the agency's findings of fact to uphold its decision. *Al-Gharib*, 604 N.W.2d at 632 (citing *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981)). Further, the court is not free to interfere with the agency's findings of fact where there is a conflict in the evidence or disagreement as to the inferences to be drawn from the evidence, whether disputed or not. *Harpole*, 621 N.W.2d at 420 ("Even if, 'as fact finder, we might have found otherwise,' we must affirm if there is enough evidence to support the findings."); *West Side Transport v. Cordell*, 601 N.W.2d 691, 693 (Iowa 1999) (citing *Stephenson v. Furnas Electric Co.*, 522 N.W.2d 828, 831 (Iowa 1994)).

The agency, as the fact-finder, may accept or reject evidence in whole or in part. *Al-Gharib*, 604 N.W.2d at 631. The agency also has the duty to weigh the evidence and determine the witnesses' credibility. *Harpole*, 621 N.W.2d at 420. The agency must consider both expert and lay evidence, if it is relevant to the issues. *Blanchard v. Belle Plaine/Vinton*, 596 N.W.2d 904, 909 (Iowa Ct. App. 1999). Furthermore, if evidence is uncontroverted, the agency must state why it rejects that evidence. *Al-Gharib*, 604 N.W.2d at 631. However, the agency is not required to validate its decisions with precise detail and specificity. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996).

Even if the reviewing court would have drawn a contrary inference from the evidence, the evidence is substantial to support an agency's decision if a reasonable mind would find it adequate to reach the same conclusion. *Terry*, 631 N.W.2d at 265 (citing *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991)). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is not supported by substantial evidence. *Harpole*, 621 N.W.2d at 418; *Terwilliger*, 529 N.W.2d at 271. The relevant inquiry is not whether the evidence might support a different finding, but whether the evidence supports the findings that the agency actually made. *Harpole*, 621 N.W.2d at 420.

An agency must also state the evidence it relied on and detail the reasons for its conclusions. *Al-Gharib*, 604 N.W.2d at 633–634; *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997). The agency's decision must be sufficiently detailed to show the path it took through conflicting evidence. *Id.* However, as long as the

agency's analytical process can be followed on appeal, the agency does not need to discuss every evidentiary fact, and the basis for its acceptance or rejection. *Id.* The agency's duty to furnish a reasoned opinion is satisfied if it is possible to work backward, and deduce what must have been the agency's legal conclusions and its findings of fact. *Id.*

An agency cannot act unconstitutionally, in violation of a statutory mandate, or without substantial support in the record. *Stephenson*, 522 N.W.2d at 831. The Iowa appellate courts grant only limited deference to the agency on issues of law, including agency rule and statutory interpretation. *Cordell*, 601 N.W.2d at 693. Notwithstanding the Iowa Supreme Court's ultimate responsibility to decide issues of law, when a case calls for the exercise of judgment on a matter within the agency's expertise, the appellate courts generally leave such decisions to the agency's informed judgment. *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). However, the Iowa Supreme Court reserves for itself the ultimate right to interpret statutes affecting an agency. *Iowa Erosion Control, Inc. v. Sanchez*, 599 N.W.2d 711, 713 (Iowa 1999).

If a different result is required as a matter of law, the facts are not in dispute, and different inferences could not reasonably be drawn therefrom, it becomes a question of law and the reviewing court is not bound by the agency's findings or conclusions. *H & Z Vending v. Dept. of Inspections*, 593 N.W.2d 168, 170 (Iowa 1999). Under those circumstances, the reviewing court can determine the facts as a matter of law. *Bearce*, 465 N.W.2d at 534. In addition, the district court may disregard the agency's

conclusions if it decides, after reviewing the entire record, that the direct and circumstantial evidence is so compelling that a reasonable mind would find the evidence inadequate to reach the same conclusions. *Hunecke*, 585 N.W.2d at 272. The reviewing court is not bound by an agency's erroneous conclusions of law. *Bridgestone/Firestone v. Emp. Appeal Bd.*, 570 N.W.2d 85, 90 (Iowa 1997). Conceding that a finding of fact is true, the district court is also not precluded from questioning whether incorrect rules of law have been applied that materially affect the decision. *Paveglio v. Firestone Tire & Rubber Co.*, 167 N.W.2d 636, 640 (Iowa 1969).

Additionally, section 17A.19(10)(n) authorizes relief from agency action that is "unreasonable, arbitrary, capricious, or an abuse of discretion." An agency's actions are arbitrary or capricious when they are taken without regard to the law or facts of a case. *Dico*, 576 N.W.2d at 355. If an agency action is unreasonable, it is clearly against the evidence and reason. *Id.* In other words, unreasonableness is action in the face of evidence as to which there is no room for difference of opinion among reasonable minds. *Stephenson*, 522 N.W.2d at 831.

Abuse of discretion occurs when agency action rests on grounds or reasons clearly untenable or unreasonable, or the agency's exercise of discretion was clearly unreasonable. *Al-Gharib*, 604 N.W.2d at 630; *Dico*, 576 N.W.2d at 355. Abuse of discretion is synonymous with unreasonableness, involving lack of rationality and focusing on whether the agency has made a decision clearly against reason and evidence. *Dico*, 576 N.W.2d at 355; *see also Al-Gharib*, 604 N.W.2d at 630 (abuse-of-discretion standard under section 17A.19(10)(n) is the same in reviewing the exercise of

the district court's discretion). Furthermore, if an agency is vested with discretion to do or not to do a particular act, the failure of the agency to exercise discretion is an abuse of discretion. *Al-Gharib*, 604 N.W.2d at 631.

CONCLUSIONS OF LAW

In its Decision on Appeal, the Board ruled the County committed a prohibited practice with the meaning of Iowa Code Section 20.10(2)(a) by discharging Sikora. (Decision, p. 21). In reaching this determination, the Board first concluded that Sikora's wage negotiations with the Fair Board, a private part-time employer, constituted protected concerted activity. (Decision, p. 17). The County alleges this determination was erroneous.

In addressing this contention, it must first be noted that the adjudication of prohibited practice complaints is among the powers and duties granted to the Board under Iowa Code Chapter 20. See Sections 20.1(2) and 20.11, *Code of Iowa* (2007). Thus, the statute vests in the Board the authority to interpret Iowa Code Section 20.10 (entitled "Prohibited practices") and its subsections, as well as Iowa Code Section 20.8. In accordance with the standard of review set forth above, the court can therefore only reverse the Board's statutory interpretation that Sikora's wage negotiations with the Fair Board was a protected activity under Iowa Code Chapter 20, if that interpretation was irrational, illogical, or wholly unjustifiable. See Section 17A.19(10)(I), *Code of Iowa* (2007). After reviewing the facts in the record, along with the relevant statutory language, the court now concludes it was not.

Iowa Code Sections 20.10(2) and (2)(a) provide:

2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

Sections 20.10(2) and (2)(a), *Code of Iowa* (2007). It is undisputed in the record that the County is a public employer, and that at all times material to this cause of action, Sikora was an employee of the County. Therefore, the issues become whether or not the County willfully interfered with or restrained Sikora in exercising a right granted to him by Chapter 20.

Turning first to the issue of whether or not Sikora was exercising a right granted to him by Chapter 20, Iowa Code Section 20.8(3) grants to public employees, such as Sikora, the right to: "[e]ngage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state." Section 20.8(3), *Code of Iowa* (2007). The court concludes, as did the Board, that the language of Section 20.8(3) is broad enough to encompass Sikora's wage negotiations with the Fair Board. In reaching this conclusion, the court finds that it is neither "irrational, illogical, [nor] wholly unjustifiable" for the Board to interpret the language of Iowa Code Section 20.8(3) as including the right of public employees, such as Sikora, to negotiate a better wage package for both himself and other members of his work crew with their part-time private employer, the Fair Board.¹

¹ Of section 20.8's four subsections, (1) and (4) explicitly mention employee organizations, but subsections (2) and (3) do not. If the Legislature had meant to limit subsection (2) and (3) activities to those within an employee organization context, it could have made that clear by inserting that phrase, as it did in subsections (1) and (4). But it chose not to do so, thereby expanding the scope of protected activities.

Finally, the County does not cite to nor has the court found any prohibition, either in Chapter 20 or in any other law of this state, against the type of wage negotiations Sikora engaged in with the Fair Board, which ultimately lead to the termination of his employment by the County. For all of the foregoing reasons, the court concludes that the Board correctly interpreted Iowa Code Section 20.8(3) when it arrived at the conclusion that Sikora was engaging in a concerted activity protected under Iowa Code Section 20.8(3).

The Board also concluded that the County's actions in discharging Sikora from his employment with the County "demonstrated a reckless disregard for whether Sikora's discharge was in violation of the statute, and was thus willful within the meaning of Iowa Code Section 20.10." (Decision, p. 21). The County argues that the Board applied an incorrect legal standard in examining its conduct in this case; that the credibility and factual determinations relied upon by the Board in reaching this conclusion are not supported by substantial evidence; and thus the record cannot support a finding that the County willfully violated rights granted Sikora as required by Iowa Code Section 20.10(2)(a).

To begin its analysis, the court notes the applicable legal standard for willfulness in this case is that set forth in the case of *Cedar Rapids Fire Fighters v. Pub. Emp. Relations Bd.*, 522 N.W.2d 840 (1994). Specifically, the Iowa Supreme Court, in interpreting willful within the context of section 20.10 wrote:

Iowa Code section 20.10(1) provides:

It shall be a prohibited practice for any public employer, public employee or employee organization to

willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

Our court has never interpreted the word “willfully” in this section. The United States Supreme Court, however, has interpreted it in the context of the Fair Labor Standards Act (FLSA) and the Age Discrimination in Employment Act (ADEA).

In *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 108 S.Ct. 1677, 100 L.Ed.2d 115 (1988), the Court considered the meaning of “willful” as used in the statute of limitations applicable to civil actions enforcing the FLSA.

The Supreme Court made it clear that Congress, by using the word “willful,” intended to distinguish between ordinary violations and those that were willful. *Id.* at 132, 108 S.Ct. at 1681, 100 L.Ed.2d at 122. It said:

The word “willful” is widely used in the law, and, although it has not by any means been given a perfectly consistent interpretation, it is generally understood to refer to conduct that is not merely negligent. The standard of willfulness that was adopted in [*Trans World Airlines, Inc. v. Thurston* [, 469 U.S. 111, 105 S.Ct. 613, 83 L.Ed.2d 523 (1985)]] — that the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute — is surely a fair reading of the plain language of the Act.

Id. at 133, 108 S.Ct. at 1681, 100 L.Ed.2d at 123.

Cedar Rapids Fire Fighters,, 522 N.W.2d at 843. The Iowa Supreme Court then went on to adopt and use the definition of “willful”, as set forth in the *Thurston* case, to analyze a willful failure to negotiate claim brought pursuant to Iowa Code Section 20.10(1). *Id.*

In the present case, the Board based its determination of willfulness on what it found was Rinehart’s unreasonable conduct, which “demonstrated a reckless disregard for whether Sikora’s discharge was in violation of the statute.” Therefore, the court

concludes the Board did, in fact, apply the correct legal standard in examining the County's conduct in this case. The final issue to be examined is whether or not substantial evidence exists to support this determination by the Board.

The evidence is substantial to support the Board's findings if a reasonable mind would find it adequate to reach the same conclusion. *Terry*, 631 N.W.2d at 265 (citing *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991)). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is not supported by substantial evidence. *Harpole*, 621 N.W.2d at 418; *Terwilliger*, 529 N.W.2d at 271. The relevant inquiry is not whether the evidence might support a different finding, but whether the evidence supports the findings that the agency actually made. *Harpole*, 621 N.W.2d at 420.

Furthermore, under the standard of review set forth above, the Board's credibility findings, as well as its findings of fact carry the effect of a jury verdict. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). This court must therefore give deference to the Board's fact-finding role, and broadly and liberally construe the Board's findings to uphold its decision. *Al-Gharib*, 604 N.W.2d at 632 (citing *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981)). Further, this court cannot interfere with the Board's findings regarding credibility or its findings of fact where there is a conflict in the evidence or disagreement as to the inferences to be drawn from the evidence. *Harpole*, 621 N.W.2d at 420.

After having reviewed the record in its entirety using the standards just cited, the court concludes that substantial, albeit disputed, evidence exists to support the Board's

fact finding and credibility assessments. As the Board determined, Sikora's testimony evidences a consistent, detailed, and logical account of what happened between himself and Hurst. By contrast, Hurst's account contains inconsistencies concerning key details about the discussions that took place between Sikora and him. During his hearing testimony, Hurst backtracked on details contained in Houchins' letter. Also, Hurst's account seems confused regarding when particular meetings took place, and exactly what happened during those meetings. This comparison alone could lead the Board, as the fact-finder, to accept Sikora's account and discount Hurst's.

The Board also determined Rinehart's claim Sikora did not deny allegations against him was less credible than Sikora's account in which he said he denied the allegations. (Decision, p. 14). As support, the Board noted the following facts:

- (1) Rinehart's termination meeting with Sikora happened soon after Sikora and others went to the board of supervisors about Rosacker and other employment issues;
- (2) Rinehart never asked Sikora what he actually said to Hurst;
- (3) Rinehart never attempted to discern if there was another witness to Hurst and Sikora's discussion;
- (4) After hearing the allegations from Hurst, Rinehart told Hurst he would probably discipline Sikora;
- (5) Rinehart called Hurst in either September or October of 2004 and told Hurst he wanted to look into Hurst's allegations, and then told Hurst he needed something written down;
- (6) Rinehart never conducted any sort of investigation into Hurst's allegations beyond receiving Houchins' letter — a letter fashioned from a meeting Hurst requested and containing information Rinehart already knew;
- (7) Rinehart never asked Sikora, a twenty-year employee with a spotless disciplinary record, for his side of the story;

(8) Rinehart's own memo "concerning the firing of Jim Sikora" explicitly states he intended to fire Sikora before the October 29, 2004 termination meeting.

The foregoing evidence, the court concludes, is sufficiently substantial to support the Board's determination questioning Rinehart's credibility, and accepting Sikora's version of the events leading up to the termination of his employment with the County. This same evidence also supports the Board's determinations that (1) Rinehart had no reasonable basis upon which he could formulate a "good faith" or "honest" belief that Sikora was guilty of misconduct; (2) that the Union met its burden of establishing that the misconduct did not occur; and, (3) that Rinehart's conduct, demonstrated a reckless disregard for whether Sikora's discharge was in violation of the Iowa Code Section 20.10(2)(a), and was thus willful within the meaning of that Code section.

ORDER

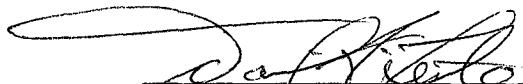
Based on the foregoing Findings of Fact and Conclusion of Law, **IT IS HEREBY ORDERED** as follows:

- 1) All of the above;
- 2) The Petition for Judicial Review of Agency Action filed by Petitioner Clay County, Iowa on May 10, 2007 is denied;
- 3) The Decision on Appeal of Respondent Public Employment Relations Board filed on April 13, 2007, and as amended by the Amended Order filed on May 7, 2007, is affirmed;
- 4) Court costs as taxed by the Clerk of Court are assessed to the Petitioner;

5) The Clerk of Court is requested to mail copies of this ruling to counsel of record.

SO ORDERED this 25th day of June 2008.

HEARING HELD: Yes No
If YES: Contested or Uncontested



DAVID A. LESTER, Judge
Third Judicial District of Iowa

Copies mailed/faxed/delivered to:

M Zenor J Berry C McDonald
M Smith J Swanger
on 6/26/08 by Ym

Notice: If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 712-279-6616. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)